

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HIGHWAY MATERIALS, INC. :
: CIVIL ACTION NO. 02-cv-3212
v. :
: WHITEMARSH TOWNSHIP, MONTGOMERY :
COUNTY, PA, et al. :
:

DEFENDANTS' SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
THEIR MOTION TO COMPEL PRODUCTION OF DOCUMENTS
IDENTIFIED IN WOODROW & ASSOCIATES' PRIVILEGE LOG
AND PLAINTIFF'S PRIVILEGE LOG

Following oral argument on Defendants' Motion on January 9, 2004, Plaintiff submitted declarations from James J. Garrity, Esquire and Timothy P. Woodrow in opposition to the Motion.

A review of the Garrity and Woodrow declarations highlight the need for the Court to review the actual documents claimed to be privileged to determine if, in fact, they are. For example, in paragraph 4 of Mr. Garrity's declaration he states, *inter alia*:

"Because HMI does not have any civil engineers with Mr. Woodrow's expertise in the land development process, in order to render advice to Mr. DePaul and his employees concerning the land development process, I frequently consulted with and relied upon Mr. Woodrow for his expertise in various matters, engineering and otherwise relating to the land development process." (Emphasis added).

A review of Mr. Woodrow's deposition reflects activities which are typical of the functions that any other engineering consultant would provide to a developer during a subdivision and land development process. He was, as his declaration reflects, a consultant on the project for "engineering" issues.

In light of the declarations, Defendants respectfully request that the Court conduct an "in camera" review of those documents which counsel, at oral argument, identified as the documents remaining at issue. They include the following:

1. Communications from third parties to Plaintiff's counsel: P-1, P-12, P-16, P-17, P-18, P-19, P-20, P-21, P-23, P-26, P-28; 36, 37, 38, 73, 93, 100, 170;
2. Communications from Plaintiff's counsel to third parties: P-10, P-14, P-15, P-22, P-24, P-25, P-27, P-29, P-30, 97, 98, 102, 103, 106, 115, 124, 158; and
3. Communications between Plaintiff's counsel and the client which have been disclosed to third parties: P-6, P-8, 169.

Defendants believe that an in camera review will reflect that some, if not all of the documents claimed to be privileged are not privileged because (a) Mr. Woodrow is an independent consultant, not the functional equivalent of an employee or (b) the communications do not reflect a request for or the giving of legal advice.

With regard to the work product privilege asserted by Plaintiff's counsel, an in camera review is necessary to determine if the consultants in question prepared the allegedly privileged documents in anticipation of litigation.

DEASEY, MAHONEY & BENDER, LTD.

BY: _____

HARRY G. MAHONEY, ESQUIRE
CRAIG M. STRAW, ESQUIRE
Attorneys for Defendants, Whitemarsh
Township, the Board of Supervisors of

Whitemarsh Township, Ann D. Younglove,
Ronald J. Derosa, William P. Rimel, Peter P.
Cornog and Michael A. Zeock

Attorney I.D. Nos. 19609/78212
Suite 1300
1800 John F. Kennedy Boulevard
Philadelphia, PA 19103-2978
(215) 587-9400

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CERTIFICATE OF SERVICE

I, Harry G. Mahoney, Esquire, hereby certify that Defendants Whitemarsh Township, the Board of Supervisors of Whitemarsh Township, Ann D. Younglove, Ronald J. Derosa, William P. Rimel, Peter P. Cornog, Michael A. Zeock and Thomas F. Zarko's Supplemental Memorandum in Support of their Motion to Compel Production of Documents was served this date, via facsimile and first class mail, on all counsel of record addressed as follows:

Walter M. Einhorn, Jr., Esquire
Ballard, Spahr, Andrews & Ingersoll, LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103

Kevan F. Hirsch, Esquire
Kaplin, Stewart, Meloff, Reiter & Stein, P.C.
350 Sentry Parkway
Building 640
Blue Bell, PA 19422

Date:

HARRY G. MAHONEY, ESQUIRE